

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**
(PCT Rule 43bis.1)

To:

see form PCT/ISA/220

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/EP2004/052646

International filing date (day/month/year)
25.10.2004

Priority date (day/month/year)
29.10.2003

International Patent Classification (IPC) or both national classification and IPC
A23G9/28

Applicant
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1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1b/s(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

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**WRITTEN OPINION OF THE
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Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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Box No. V Reasoned statement under Rule 43bis.1(a)(I) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	2-4,6
	No: Claims	1,5,7-9
Inventive step (IS)	Yes: Claims	
	No: Claims	2-4,6
Industrial applicability (IA)	Yes: Claims	1 - 9
	No: Claims	

2. Citations and explanations

see separate sheet

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

Re Item V

**Reasoned statement with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement:**

1. The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 1, 5, 7 to 9 is not new in the sense of Article 33(2) PCT.

The document D1, GB-A-1 004 1881, the description, page 2, lines 24 to 55 and figures 1 to 4, discloses a hatch with a dispensing piston 7 comprising a cylindrical seat having a vertical axis communicating with a freezing cylinder via a radial duct 10 housing a sleeve 2 rotatable about its vertical axis provided with a radial hole 13. Operating means 3 aligns the sleeve in a first position in which the hole is connected to the radial duct 10 and in a second position closes off the connection. The piston 7 is mounted slidably inside the sleeve. A base element 8 closes of the seat. The known hatch is suitable to be used for mounting on a single-cylinder machine as well as to a twin-cylinder machine.

2. The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 2 to 4,6 does not involve an inventive step in the sense of Article 33(3) PCT.

2.1. Claim 2:

The document D1 is regarded as being the closest prior art to the subject-matter of claim 2 (see point 1 of the present opinion).

The subject-matter of claim 2 therefore differs from the device known from D1 in that it is provided with two parallel cylindrical seats connected via two radial ducts to the same freezing cylinder and in that one sleeve is provided with a base plate which has a fretted or flower-shaped hole whereas the second base element is provided with a plurality of holes. The problem to be solved by the present invention may therefore be regarded as providing a simple hatch (or double hatch) having the possibility of extruding different forms of ice cream. As it is known to extrude different forms of ice cream depending on the used extrusion plate, the claimed combination of a hatch known from D1 with a "normal" piston, meaning a known hatch (see for example D2, US-B-6 299 025, fig.2, provided with a base plate with a flower shaped hole) in order to dispense different forms of ice cream cannot be regarded as involving an inventive step. The man skilled in the art will adapt the known hatches accordingly without the exercise of an inventive step.

Dependent claims 3, 4 and 6 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of inventive step:

- Claims 3 and 4: The use of projections which complement the holes of an extrusion element and also the provision of positioning means to exactly align the piston in the extrusion element is generally known in the field of extrusion of food articles in order to prevent obstruction of the holes. The application of this known principle in an ice cream making machine is obvious for the man skilled in the art to avoid obstruction.
- Claim 6: The use of means for dispensing a dressing syrup in ice cream making machines is generally known.

The industrial applicability of the claimed subject matter in the field of ice cream dispensers is evident (Article 33(4) PCT).

RE: item VIII:

The application does not meet the requirements of Article 6 PCT, because claims 1, 2, 5 to 9 are not clear.

- Claim 1: In line 10 a "second" seat is claimed which position has not been defined before and which according to the used reference sign is the same seat as claimed in line 2.
- Claim 2: The use of the word "normal" implies on one hand that the device is known per se and on the other hand this wording is not suitable to technically define the piston.
- Claims 5 and 6: The use of the verb "may" implies that the features following this verb are facultative, and relates to the use of the device rather than clearly defining the features which define the hatch. In claim 5 it is not clear what is meant by a "mixed manual/mechanical manner" as the disclosed operating of the device is both mechanical and manual.
- Claims 7 to 9 define the hatch by their use ("suitable for mounting..") without clearly defining technical features which make the hatch suitable for the specific purpose.